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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 VICKI F.,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

Case No. C19-73 MJP

**ORDER REVERSING THE
COMMISSIONER'S FINAL
DECISION AND REMANDING
FOR AN AWARD OF BENEFITS**

13 Plaintiff contends the ALJ erred by denying her application for Disability Insurance
14 Benefits and seeks remand for an award of benefits. Dkt. 11, 16. The Commissioner concedes
15 that the ALJ erred, but seeks remand for further administrative proceedings. Dkt. 15. As
16 discussed below, the Court **REVERSES** the Commissioner's final decision and **REMANDS** the
17 matter for an award of benefits under sentence four of 42 U.S.C. § 405(g).

18 **BACKGROUND**

19 Plaintiff is currently 53 years old, has at least a high school education, and has worked as
20 a truck driver and a waitress. Dkt. 7, Admin. Record (AR) 26. Plaintiff applied for benefits in
21 June 2013, alleging disability as of March 2013. AR 104. Plaintiff's application was denied
22 initially, on reconsideration, and by a November 2014 ALJ decision. AR 103, 116, 133-45.

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1 Plaintiff appealed the ALJ's decision and filed a new application for benefits. AR 246, 153.
2 Plaintiff's new application was granted, with an established onset date of December 31, 2015.
3 AR 181. However, the Appeals Council vacated both the favorable decision and the ALJ's
4 decision, consolidated both claims, and remanded them to the ALJ. AR 185-86. After the ALJ
5 conducted a hearing in May 2017, the ALJ issued a decision finding Plaintiff had the severe
6 impairments of diabetic peripheral neuropathy, degenerative disc disease, affective disorder, and
7 obesity, but was not disabled. AR 37, 15-28.

8 DISCUSSION

9 The parties agree that the ALJ erred by rejecting the medical opinions of Plaintiff's
10 treating physician Ellen Kim, M.D., and nonexamining physician Drew Stevick, M.D., and by
11 rejecting Plaintiff's testimony. *See* Dkt. 11, 15. Plaintiff requests remand for an award of
12 benefits.

13 In general, the Court has "discretion to remand for further proceedings or to award
14 benefits." *Marcia v. Sullivan*, 900 F.2d 172, 176 (9th Cir. 1990). The Court may remand for
15 further proceedings if enhancement of the record would be useful. *See Harman v. Apfel*, 211
16 F.3d 1172, 1178 (9th Cir. 2000). The Court may remand for benefits where (1) the record is
17 fully developed and further administrative proceedings would serve no useful purpose; (2) the
18 ALJ fails to provide legally sufficient reasons for rejecting evidence, whether claimant testimony
19 or medical opinion; and (3) if the improperly discredited evidence were credited as true, the ALJ
20 would be required to find the claimant disabled on remand. *Garrison v. Colvin*, 759 F.3d 995,
21 1020 (9th Cir. 2014). The Court has flexibility, however, "when the record as a whole creates
22 serious doubt as to whether the claimant is, in fact, disabled within the meaning of the Social
23 Security Act." *Id.* at 1021.

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1 **A. The Record is Fully Developed**

2 The Commissioner argues that the record is not fully developed because of an
3 “unresolved evidentiary issue” involving the December 2015 disability finding and because
4 Plaintiff argued in her opening brief that the ALJ erred by failing to request certain records and
5 to consider chronic pain syndrome. Dkt. 15 at 3-5.

6 The “unresolved evidentiary issue” is based on the Commissioner’s misapprehension of
7 the record. The Commissioner erroneously asserts that state agency physician Dr. Stevick
8 opined Plaintiff could perform “light work.” Dkt. 15 at 4. In fact, Dr. Stevick’s opinions states
9 that Plaintiff could perform “SEDENTARY” work. AR 180. This was based on his opinion that
10 Plaintiff could stand and/or walk for only “4 hours” total per day, while “the full range of light
11 work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour
12 workday.” AR 176; Soc. Sec. Ruling 83-10, 1983 WL 31251 (1983). Because of Plaintiff’s age,
13 education, and work experience, restricting her to a sedentary exertional level mandates a
14 determination of disability under the Medical-Vocational Guidelines. 20 C.F.R. Pt. 404, Subpt.
15 P, App’x 1, § 201.14. The Commissioner states that “[i]t is not entirely clear who made” the
16 disability finding. Dkt. 15 at 4. Other than apparently baseless speculation that someone in the
17 Social Security Administration erroneously entered some data somewhere, the Commissioner
18 offers no reason why the agency’s disability determination is incorrect. This is not an adequate
19 basis for the Court to conclude that the record is not fully developed.

20 The Commissioner relies on *Treichler* to argue that other outstanding evidentiary issues
21 preclude remand for benefits. Dkt. 15 at 3 (citing *Treichler v. Comm’r. of Soc. Sec. Admin.*, 775
22 F.3d 1090, 1099-1101 (9th Cir. 2014)). In *Treichler*, there were “significant factual conflicts in
23 the record between [the plaintiff’s] testimony and objective medical evidence.” 775 F.3d at

1 1104. Here, there are no significant factual conflicts.

2 Because “the ALJ did not evaluate chronic pain syndrome,” the Commissioner argues
3 that “this impairment should be explicitly addressed on remand.” Dkt. 15 at 3. The fact that
4 Plaintiff could be found disabled on the additional ground of chronic pain syndrome does not
5 make evidence of chronic pain relevant to finding her disabled on the grounds of neuropathy and
6 degenerative disc disease. The Commissioner does not argue that adding another severe
7 impairment will render Plaintiff any less impaired.

8 Finally, the Commissioner argues that because “Plaintiff argues the ALJ failed to develop
9 the record because the ALJ did not request podiatry records regarding her neuropathy and foot
10 issues,” further proceedings would be useful. Dkt. 15 at 4-5 (citing Dkt. 11 at 16). Plaintiff
11 initially argued in her opening brief that the ALJ erred by rejecting Dr. Kim’s findings without
12 requesting notes from a podiatrist that Dr. Kim repeatedly mentioned had treated Plaintiff. Dkt.
13 11 at 16. In the response brief, the Commissioner does not argue that the podiatrist’s notes might
14 justify discounting Dr. Kim’s opinions, but in fact concedes the ALJ erred by rejecting Dr. Kim’s
15 opinions. Dkt. 15. The lack of the podiatrist’s notes do not indicate the type of “significant
16 factual conflicts in the record” that require further proceedings. *Treichler*, 775 F.3d at 1104.

17 **B. The ALJ Improperly Discredited Plaintiff’s Testimony and Two Medical Opinions**

18 The parties agree that the ALJ erred by rejecting Plaintiff’s testimony and the medical
19 opinions of Plaintiff’s treating physician Dr. Kim and nonexamining state agency physician Dr.
20 Stevick. *See* Dkt. 11, 15.

21 **C. The Improperly Discredited Evidence Establishes Disability**

22 Plaintiff testified that she cannot sit or stand for more than 10 minutes or walk more than
23 half a block at a time. AR 45-46. She cannot lift more than 5 pounds. AR 46. She gets blurred

1 vision if she looks at a computer for more than 10 minutes. AR 44. She cannot focus for more
2 than about 15 minutes. AR 52. Dr. Kim opined that Plaintiff can sit three hours, stand one hour,
3 and walk less than half an hour total per day, and must recline the remainder of an 8-hour
4 workday. AR 925. She can carry 10 pounds occasionally. AR 924. Dr. Stevick opined that
5 Plaintiff was restricted to sedentary work. AR 180.

6 This improperly discredited evidence establishes disability in multiple ways. Vocational
7 expert testimony established that needing to recline five minutes every hour, totaling 40 minutes
8 in an 8-hour day, would preclude all competitive work. AR 66. Dr. Kim's opinions and
9 Plaintiff's testimony each establish a need to recline more than 40 minutes. AR 925, 45-46. The
10 vocational expert also testified that a worker whose diminished focus reduced their productivity
11 by 15 percent would be unable to maintain employment. AR 66. Plaintiff's testimony of
12 severely diminished focus rises to this level. AR 44. Vocational expert testimony also
13 established that a 10-pound lifting limit would restrict a person to sedentary work. AR 66. Dr.
14 Kim's opinions and Plaintiff's testimony each establish a lifting limit of 10 pounds or less. AR
15 924, 46. Dr. Stevick also opined a sedentary restriction. AR180. If Plaintiff were restricted to
16 sedentary work, the Medical-Vocational Guidelines would mandate a determination of disability.
17 20 C.F.R. Pt. 404, Subpt. P, App'x 1, § 201.14.

18 **D. Discretion**

19 All three requirements to remand for benefits are met. *Garrison*, 759 F.3d at 1020. (1)
20 The record is fully developed, there are no outstanding relevant evidentiary issues, and further
21 administrative proceedings would serve no useful purpose. (2) The ALJ failed to provide legally
22 sufficient reasons for rejecting Dr. Kim's and Dr. Stevick's opinions and Plaintiff's testimony.

23 (3) If the improperly discredited evidence were credited as true, the ALJ would be required to
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1 find Plaintiff disabled on remand.

2 The only remaining issue is whether the Court should exercise its discretion to remand
3 for further proceedings because “the record as a whole creates serious doubt as to whether the
4 claimant is, in fact, disabled within the meaning of the Social Security Act.” *Id.* at 1021. The
5 Court concludes that the record does not create any such doubt. Accordingly, the Court remands
6 for an award of benefits.

7
8 **CONCLUSION**

9 For the foregoing reasons, the Commissioner’s final decision is **REVERSED** and this
10 case is **REMANDED** for an award of benefits under sentence four of 42 U.S.C. § 405(g).

11 DATED this 9th day of July, 2019.

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15 Marsha J. Pechman
16 United States District Judge
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